



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-v-

ESTEBAN GONZALEZ,

Defendant.  
----- x

94 Cr. 134 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.

In connection with defendant's resentencing hearing on December 2 and December 4, 2009 to determine whether the sentence imposed in this case should run concurrently or consecutively to the sentence imposed on the defendant in United States v. Esteban Gonzalez, 00 Cr. 447 (DLC), the Court concluded that a "Fatico" hearing was necessary to determine whether defendant was in knowing possession of a shank discovered in a search of the defendant's cell at USP Canaan on June 25, 2009. Although the matter is not by any means free from doubt, the Court on balance concludes that it is more likely than not that the defendant did knowingly possess the shank. Particularized reasons for that conclusion will be spelled out in a subsequent, more detailed memorandum, but the Court takes this opportunity to notify counsel of its conclusion in advance of tomorrow's final resentencing hearing. The Court further notes, however, that as a result of the "Fatico" hearing, the Court gained a fuller picture of this defendant's character and development that presents a more complicated picture than was presented to Judge

Mukasey at the time of the defendant's prior sentencing, and that will factor into the Court's sentence as well.

SO ORDERED.

  
JED S. RAKOFF, U.S.D.J.

Dated: New York, New York  
January 28, 2010